

AMS CHANGE REQUEST COVER SHEET

Change Request Number: 14-19A

Date Received: 2-11-14

Title: Export Control Review – Procurement Guidance Changes

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Policy OR Guidance: Guidance

Affected Section/Text Location: T3.6.4A.14 (new section), T3.6.4A.15 (formerly T3.6.4A.14), T3.14.1A.3

Summary of Change: Establishment of export control review process.

Reason for Change: Consistency with FAA Order 1240.13 – FAA Export Control Compliance

Development, Review, and Concurrence: Acquisition Policy Division, Contracting, Personnel Security, and Procurement Legal

Target Audience: Program Offices and Contracting Workforce

Potential Links in FAST for the Change: N/A

Other Documents that may be Affected: None

Attachments: redline and final documents.

Briefing Planned: Yes.

ASAG Responsibilities: Review and Approve.

Redlines

Section Added : 14 Export Control (T3.6.4 Foreign Acquisition : A : Foreign Acquisition)

14 Export Control Added 4/2014

- a. All FAA employees, contractors and other agents working in support of the FAA must be familiar with export control requirements and seek appropriate guidance before transferring or disclosing items, services, or information to a foreign entity or foreign national, and must comply with U.S. export control requirements.
- b. *Foreign Nationals.* In addition to being subject to AMS Personnel Security Guidance, the use of foreign nationals on a contract may be considered an export and thus require a successful export control review to be conducted prior to the foreign national working on the contract.
- c. *Export Control Review Process.* Before transferring or disclosing items, services or information to a foreign entity or foreign national, the following process must be followed consistent with FAA Order 1240.13 and the FAA Export Control Compliance- Supplemental Guidance (“Supplemental Guidance”) found at <https://employees.faa.gov/org/staffoffices/apl/offices/api/> (*FAA Only*). The export control review effort is a team effort between the Contracting Officers, FAA Lines of Business (LOBs)/program offices, and AGC-500. Depending on the foreign party (e.g. Government entity vs. private corporation), different types of contract vehicles (e.g. international agreement vs. contract) may be required and the transaction itself may fall under different FAA offices (e.g., ATO International). If there is a question as to the appropriate vehicle for the transaction with a foreign entity, contact the LOB international staff or the Office of International Affairs (API).

(1) *Initial Determination.*

Consistent with FAA Order 1240.13 and the Supplemental Guidance Key Questions, the COR must initially determine if the item, services or information to be provided under the contract or Other Transaction (OT) Agreement is export controlled. Examples of export controlled items include FAA equipment, parts and maintenance services delivered outside the United States even for FAA purposes. It also includes giving or sending items such as documents, CDs, key fobs, thumb drives, etc., to a foreign entity or foreign national.

If the item, services, or information is initially determined to be export controlled, then a formal Export Control Review is required. The Export Control Review process is set forth in detail in the Supplemental Guidance. This review involves the following:

- (a) Completing the Export Control Workbook (“Workbook”) with all required information, including the Export Control Classification Number (found at www.bis.doc.gov). When completing the Workbook, be as detailed as possible. A

Workbook should be completed for each export control review. The Workbook is available at <https://employees.faa.gov/org/staffoffices/apl/offices/api/> (*FAA only*).

(b) Emailing the completed Export Control Workbook to AGC-500 at 9-AWA-AGC-EXPORTS@faa.gov. In the email subject line, write: “[Country Name] Export Control [Item Description]” (e.g. Bermuda Export Control Mode-S).

(c) When the Export Control Review is completed, AGC-500 will provide an email from the export control mailbox stating whether the transaction is “Export Eligible.”

(i) If the transaction is “Export Eligible” or “Not Controlled” then it may proceed (e.g., the documentation may be released at an industry day, for a vendor visit, or with a SIR; or a particular foreign national may work on the contract).

(ii) If the transaction is “Not Export Eligible,” or if an export license is required, then AGC-500 and the procurement team must discuss the issue before taking further action.

(2) *Name Checking.*

Name checking is an important part of the export control review process because some foreign nationals and entities are on what are commonly known as “prohibited persons lists.” People and entities on these lists are prohibited from receiving exports.

Instructions for completing a name check are included in the Workbook. Full name, organization and citizenship information is required to complete the name check against the Consolidated Screening List at <https://employees.faa.gov/org/staffoffices/apl/offices/api/> (*FAA only*).

Because of a slightly different focus between the two lists, checking the System for Award Management (SAM) “Exclusions” list cannot substitute for checking the Consolidated Screening List. Each list must be checked at the appropriate time for each acquisition.

(3) *Documentation.*

Completed Export Control Workbooks and export eligibility determinations from AGC-500 must be retained in the contract file, either in hard copy or electronically.

(4) *Responsibilities.*

(a) *Contracting Officer.*

(i) Identifying potential export control issues during acquisition planning activities, SIR/contract issuance, and contract administration;

(ii) Checking foreign nationals identified in the- Workbook against the Consolidated Screening List to determine if recipients of the export controlled items are on the lists of

prohibited persons/entities, and documenting the results of the name check and the date the check was conducted.

(iii) Ensuring that appropriate export clauses are included in contracts and OT agreements either performed abroad, by foreign nationals, or involving deliveries to foreign locations.

(iv) Ensuring that all required security reviews, initial export control determinations and any required export control reviews are performed for foreign nationals working on FAA contracts and OT Agreements.

(v) Supporting CFIUS Reviews, as requested.

(vi) Supporting AGC-500 during the export review process.

(b) *COR/Program Office.*

(i) Identifying/anticipating export control issues in program activities, including, but not limited to, acquisition planning, contract administration, program industry days, and meeting with foreign entities and foreign nationals.

(ii) Answering Supplemental Guidance Key Questions, make the initial export control review determination, and advise the Contracting Officer of such determination and its basis in writing.

(iii) Supporting the Contracting Officer with respect to any export control issues that arise and relaying potential export controlled activities identified to the Contracting Officer.

(iv) Completing the Workbook, including identifying the Export Control Classification Numbers (ECCN) and recipients.

(v) Supporting CFIUS Reviews, as requested.

(vi) Supporting AGC-500 during the Export Control Review process.

(c) *AGC-500.*

AGC-500 is responsible for conducting the export control review once a completed Export Control Workbook is submitted to the Export Control Mailbox, and providing an export eligibility determination to the CO.

d. *Committee on Foreign Investment in the United States Review (CFIUS).*

(1) *CFIUS Background.*

CFIUS is an inter-agency committee authorized to review transactions that could result in control of a U.S. business by a foreign person (“covered transaction”) in order to determine the effect of such transactions on the national security of the United States. CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (FINSAs) (section 721) and as implemented by Executive Order 11858, as amended, and regulations at 31 C.F.R. Part 800.

CFIUS issues arise when a non-U.S. company seeks to buy or merge with a U.S. company. CFIUS examines the covered transaction in order to identify and address, as appropriate, any national security concerns that arise as a result of the transaction. During the review period, CFIUS members, through the Department of the Treasury as Committee Chair, may request additional information on related FAA contracts.

(2) *CFIUS Review Responsibilities.*

(a) Contracting Officers: Contracting Officers are responsible for identifying all contracts (and any subcontract) that the FAA has with the U.S. business involved in the covered transaction that is subject to the CFIUS review and for identifying/producing any contract provisions affecting contractor roles access or duties.

(b) Contracting Officer's Representative: The COR is responsible for identifying the contractor's duties and data, software, systems, equipment, etc., that the contractor has delivered or has continuing access to and helping determine whether this could affect national security.

e. *Foreign Visitors.* Certain types of visits by foreign nationals to FAA facilities, and meetings with FAA personnel, regardless of the location, are subject to export control requirements. In particular, visits or meetings involving the demonstration of technology and/or software, and visits or meetings that involve the release of source code or other technical documentation to foreign nationals may require a review of the Supplemental Guidance Key Questions. Cognizant FAA LOBs and Staff Offices are responsible for ensuring that all information to be shared with foreign nationals during visits or meetings with the FAA has been reviewed. FAA Order 1600.74 Visitor Procedures for FAA Facilities contains guidelines for the conduct of visits by foreign nationals to FAA facilities.

f. *Foreign Travel.* See FAA International Travel Policy and FAA Order 1600.61B International Travel Security Briefing & Contact Reporting Requirements for FAA Employees and Contractors.

g. *Definitions.*

Note: These definitions are applicable to the export control review process only.

Business Process: Any explanation of the management, operational, and supporting processes that the FAA conducts to accomplish its mission. Examples of business processes include, but are not limited to, the following: how to create a flight procedure, how to redesign airspace, how to certify aircraft parts, how to conduct Safety Risk Management reviews, how to mobilize disaster relief efforts, and organizational charts with roles and responsibilities. Business process information is not export-controlled.

Consolidated Screening List: A list of entities and individuals for which the USG maintains restrictions on certain financial transactions, exports, re-exports or transfers of items, services or information.

Country of Concern: Countries subject to sanctions or embargoes, or countries that condone terrorist-supporting activities (e.g., Cuba, Iran, North Korea, Sudan, Syria). The EAR identifies countries of concern as "Country Group E" and lists them in the EAR at 15 CFR 740, Supplement 1. The U.S. Departments of State and Treasury track a broader list for countries of concern subject to their regulations. Transactions with countries of concern receive a higher degree of scrutiny and usually require a transaction-specific license. See the Additional Resources section of the Supplemental Guidance for more detail.

Export: Any item, service or information that is sent from the United States to a foreign destination is an export. Export means taking or sending an item, service or information out of the United States even if the item (e.g., test equipment) will be returned to the United States. Export also means giving an item, service or information to a foreign national or entity who might take it out of the United States. Items include commodities, software or technology, and technical data. Services include the furnishing of assistance (including training, design, maintenance, testing, installation, enhancement or use of item(s)) to a foreign national or entity whether in the United States or abroad. The release of technology or source

code to a foreign national in the United States is “deemed” to be an export to the home country of the foreign national under the EAR.

For a definition of information, see Technical Data/Documentation.

Export Administration Regulations (EAR): U.S. Department of Commerce regulations for the export and re-export of most commercial items. The EAR does not control all items, services or information. Other U.S. government agencies may regulate other items not controlled by the EAR.

Export-Controlled: Items, services or information subject to U.S. export control requirements.

Export Control Classification Number (ECCN): A U.S. Department of Commerce alpha-numeric export code, e.g., 5A991, which describes the item, service or information being exported and indicates licensing requirements. All ECCNs are listed in the Commerce Control List (CCL) and can usually be obtained from a hardware/software manufacturer.

Export Control Review: An FAA process, including a legal review and a name check of foreign nationals and entities against the U.S. Government Consolidated Screening List, to determine whether a potential transaction is eligible for export.

Export Control Workbook: An FAA document that includes worksheets for equipment/hardware, software, and training, as well as contact information for API and/or FAA Line of Business (LOB) Points of Contact, and country information, and which highlights potential areas of concern and informs AGC-500 that foreign nationals involved in the transaction have been checked against the Consolidated Screening List. A completed Workbook is required for all export control reviews.

Note: In accordance with the Paperwork Reduction Act, the export control review process and Workbook have been established for the Government to complete. The Export Control Workbook is for internal FAA use and must be completed by FAA employees, contractors and other agents working in support of the Agency.

Export Eligible: A legal determination that the intended transaction would be a lawful export. The determination is based on an identification of an export code, whether a transaction-specific license is required, and a confirmation that the person(s) and organization(s) to which the export is being made are not identified on the list(s) of known or suspected export violators.

Foreign Entity: Any organization, corporation or government agency located, incorporated or organized to do business in a country other than the United States. Foreign entities also include foreign branches, subsidiaries, and affiliates of U.S. companies, as well as other U.S. entities located in foreign countries.

Foreign National: A non-U.S. citizen. Holders of U.S. green cards and those with permanent residency in the United States are not considered foreign nationals for export control purposes.

International Traffic in Arms Regulations (ITAR): Regulations that control the export and import of defense articles and defense services. The U.S. Department of State is responsible for the administration of the ITAR.

Name Check: A process that includes a review of foreign nationals and organizations involved in an international transaction against the Consolidated Screening List. The name check is part of the Export Control Workbook, which must be completed for all export control reviews.

Publicly Available/Public Domain: Information is publicly available or in the public domain when it is generally accessible to the interested public in any form. Examples of items that are publicly available include: Web Page Documents, Performance Specifications, and Business Process Information.

Information that is publicly available or that exists in the public domain, with the exception of encryption software, is not export-controlled. Information related to commercial space transportation may be subject

to ITAR and treated differently even if publicly available; consult the designated LOB Point of Contact or AGC-500.

Technical Data/Documentation: Information, other than software or items posted on public websites, which is required for the design, development, prototyping, production, manufacture, assembly, use, testing, maintenance (inspection, overhaul, repair, preservation, and replacement of parts), rebuild, preventative maintenance, enhancement or modification of NAS systems, mission support systems, administrative systems, aircraft, or commercial space or launch systems. Training courses often involve the transfer of technical data. Examples of documentation include Maintenance Handbooks, Interface Control Documents, test plans, test procedures, schematics, configuration documents, software developers' kits, etc., regardless of medium or storage format. Characteristics of technical data include materials that usually are proprietary or sensitive. Most technical data is export-controlled.

Transaction: The transfer or disclosure of items, services or information to a foreign entity or foreign national. Transactions may also include allowing foreign nationals to visit FAA facilities or work on FAA contracts.

Section Renamed: 15 Definitions (T3.6.4 Foreign Acquisition : A : Foreign Acquisition)

154 Definitions Revised 4/2014

a. "*Canadian end product*" means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

b. "*Civil aircraft and related articles*" means (a) all aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard; (b) the engines (and parts and components for incorporation into the engines) of these aircraft; (c) any other parts, components, and subassemblies for incorporation into the aircraft; and (d) any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

c. "*Components*" means those articles, materials, and supplies incorporated directly into the end products, or in the case of construction those articles, materials, and supplies incorporated directly into construction materials.

d. "*Construction*" means construction, alteration, or repair of any public building or public work in the United States.

e. "*Construction Materials*" means an article, material, or supply brought to the construction site for incorporation into the building or work. "*Construction Materials*" also includes an item brought to the site pre-assembled from articles, materials, and supplies. However, emergency life safety systems, such as

emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

f. "*Customs territory of the United States*," as it applies to customs and duties, means the States, the District of Columbia, and Puerto Rico.

g. "*Domestic construction material*" means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued).

h. "*Domestic end product*" means (a) an unmanufactured end product mined or produced in the United States, or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic.

i. "*Domestic offer*" means an offered price for a domestic end product, including transportation to destination.

j. "*Domestic services*" means services performed in the United States. If services provided under a single contract are performed both inside and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

k. "*End product*" means those articles, materials, and supplies to be acquired for public use under the contract.

l. "*Foreign construction material*" means a construction material other than a domestic construction material.

m. "*Foreign contractor*" means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.

n. "*Foreign end product*" means an end product other than a domestic end product.

o. "*Foreign offer*" means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

p. "*Foreign services*" means services other than domestic services.

q. *"Instrumentality"* does not include an agency or division of the government of a country, but may be construed to include arrangements such as the European Union.

r. *"Manufactured product"* as it applies to "Buy American-Steel and Manufactured Products" means an item produced as a result of the manufacturing process.

s. *"Manufacturing process"* as it applies to "Buy American-Steel and Manufactured Products" means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

t. *"Mexican end product"* means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from, that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

u. *"North American Free Trade Agreement (NAFTA) country"* means Canada or Mexico.

v. *"NAFTA country construction material"* means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

w. *"NAFTA country end product"* means a Canadian end product or a Mexican end product.

x. *"Person"* (1) Means-(i) A natural person;(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and (iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and (2) Does not include a government or governmental entity that is not operating as a business enterprise.

y. *"Petroleum terms"*

1. *"Crude oil"* means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

2. "*Finished products*" means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

- (a) "*Asphalt*"-- a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.
- (b) "*Fuel oil*"--a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.
- (c) "*Gasoline*"--a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.
- (d) "*Jet fuel*"--a refined petroleum distillate used to fuel jet propulsion engines.
- (e) "*Liquefied gases*"--hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.
- (f) "*Lubricating oil*"--a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.
- (g) "*Naphtha*"--a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.
- (h) "*Natural gas products*"--liquids (under atmospheric conditions), including natural gasoline, that:
 - (1) Are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of these processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir, and
 - (2) When recovered and without processing in a refinery, definitions of products contained in subdivision (b), (c), (d), and (g) of this definition.
- (i) "*Residual fuel oil*"--a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification MIL-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

3. "*Unfinished oils*" means one or more of the petroleum oils listed under the definition of finished oils, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

z. "Sanctioned European Union (EU) construction" means construction to be performed in a sanctioned member state of the EU and the contract is awarded by a contracting activity located in the United States or its territories.

aa. "Sanctioned EU end product" means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EU or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character or use distinct form that from which it was so transformed in a sanctioned member state of the EU.

The term includes services (except transportation services) incidental to its supply; provided, that the value of these incidental services does not exceed that of the product itself. It does not include service contracts as such.

bb. "Sanctioned EU services" means services to be performed in a sanctioned member state of the EU when the contract is awarded by a contracting activity located in the United States or its territories.

cc. "Sanctioned member state of the EU" means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

dd. "United States" as it relates to the Buy American Act or the Balance of Payments Program means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

Section Revised: 3 Personnel Security (T3.14.1 Security : A : Security)

3 Personnel Security Revised 4/2014

a. *Definitions.*

(1) *Access.* The ability to physically enter or pass through an FAA area or a facility; or having the physical ability or authority to obtain FAA sensitive information, materials, or resources; or the ability to obtain FAA sensitive information by technical means including the ability to read or write information or data electronically stored or processed in a digital format such as on a computer, modem, the Internet, or a local-or wide area network (LAN or WAN). When used in conjunction with classified information, access is the ability, authority, or opportunity to obtain knowledge of such information, materials, or resources, in accordance with the provisions of Executive Order (EO)12968, Access to Classified Information.

(2) *Classified Acquisition.* An acquisition that consists of one or more contracts in which offerors would be required to have access to classified information (Confidential, Secret, or Top Secret) to properly submit an offer or quotation to understand the performance requirements of a classified contract under the acquisition or to perform the contract.

(3) *Classified Contract.* Any contract, purchase order, consulting agreement, lease agreement, interagency agreement, memorandum of agreement, or any other agreement between FAA and another party or parties that

requires the release or disclosure of classified information to the contractor and/or contractor employees in order for them to perform under the contract or provide the services or supplies contracted for.

(4) *Classified Information*. Official information or material that requires protection in the interest of national security and is labeled or marked for such purpose by appropriate classification authority in accordance with the provision of Executive Order 12958, Classified National Security.

(5) *Contractor Employee*. A person employed as or by a contractor, subcontractor, or consultant supporting FAA or any non-FAA person who performs work or services for FAA within FAA facilities.

(6) *Electronic Questionnaires for Investigations Processing (eQIP)*. Government system used to electronically process initial and subsequent investigation requests.

(7) *FAA facility*. Any staffed or unstaffed building structure, warehouse, appendage, storage area, utilities and components, which when related by function and location form an operating entity owned, operated or controlled by FAA.

(8) *Foreign National*. Any citizen or national of a country other than the United States who has not immigrated to the United States and is not a Legal Permanent Resident (LPR) of the United States.

(89) *Immigrant Alien*. Any person not a citizen or national of the United States who has been lawfully admitted for permanent residence to the United States by the U.S. Citizen and Immigration Service (USCIS). (Refer to the Immigration and Nationality Act (INA)(8 United States Code 1101), Sections 101(a)(3) and (20).

(910) *Non-Immigrant Alien*. Any person not a citizen or national of the United States who has been authorized to work in the United States by the USCIS, but who has not been lawfully admitted for permanent residence. (Refer to the INA, Sections 101(a)(3) and (20).

(101) *Operating Office*. An FAA line of business, an office or service in FAA headquarters or an FAA division-level organization in a region or center, or any FAA activity or organization that utilizes the services and/or work of a contractor.

(142) *Quality Assurance Program*. A system that provides a means of continuous review and oversight of a program/process to ensure (1) compliance with applicable laws and regulations; (2) the products and services are dependable and reliable.

(123) *Resources*. FAA physical plant, sensitive equipment, information databases including hardware, software and manual records pertaining to agency mission or personnel.

(134) *Sensitive Information*. Any information which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs or the privacy to which individuals are entitled under Section 552a of Title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an EO or an Act of Congress to be kept secret in the interest of national defense or foreign policy. Sensitive data includes propriety data.

(145) *Sensitive Unclassified Information (SUI)*. Unclassified information withheld from public release and protected from unauthorized disclosure because of its sensitivity. Section 552a of Title 5, United States Code (the Privacy Act) identifies information, which if subject to unauthorized access, modification, loss, or misuse could adversely affect the national interest, the conduct of Federal programs or the privacy to which individuals are entitled.

(156) *Servicing Security Element (SSE)*. The FAA headquarters, region, or center organizational element responsible for providing security services to a particular activity.

(167) *Vendor Applicant Process (VAP)*. FAA system utilized to process and manage personnel security information for contractor personnel.

b. The National Industrial Security Program (NISP) was established by EO 12829, January 6, 1993, to protect the Government's classified information. The NISP Operating Manual (NISPOM) prescribes the requirements, restrictions, and other safeguards necessary to prevent unauthorized disclosure of classified information and to control authorized disclosure of Classified information released by the U.S. Government. NISPOM is available online at the [NISP Library](#).

c. AMS Policy Section 3.5, Patents, Data, and Copyrights, contains policy for safeguarding classified information in patent applications and patents.

d. *Classified Information-Responsibilities of the Contracting Officer (CO)*.

(1) Comply with NISP requirements.

(2) The CO must contact the personnel security specialists in the local office regarding FAA procedures and requirements for any contracting activity requiring access to classified information, whether that information is owned by another agency or FAA. The responsible security organizations includes the following:

(a) Headquarters – ASI-200

(b) Regions – 700-designated organizations, such as "ASO-700"

(c) Technical Center – ACT-8

(d) Aeronautical Center – AMC-700

(3) *Prescreening Information Request Phase*. COs should review all proposed Screening Information Requests (SIRs) to determine whether access to classified information may be required by offerors, or by a contractor during contract performance. If access to classified information may be required, the CO must comply with subparagraph d.(1) and d.(2) above.

(4) *SIR Phase*. COs must:

(a) Ensure the classified acquisition is conducted in accordance with the requirements of d.(1) and d.(2) above;(b) Include appropriate security requirements and clauses in SIRs (see AMS Clause 3.14-1, Security Requirements, and its alternates); and as appropriate in SIRs and contracts when the contractor may require access to classified information. Requirements for security safeguards in addition to those provided in AMS Clause 3.14-1, Security Requirements, might be necessary in some instances; and

(c) Ensure the use of Contract Security Classification Specification, DD Form 254 when classified contracts are employed.

e. *Employment Suitability and Security Clearances for Contractor Personnel.* FAA's policy on personnel security for contractor employees, including those working on a FAA contract employed at contractor facilities, requires that procurement personnel take appropriate actions to protect the Government's interest where it appears that contractor employees, subcontractors, or consultants may have access to FAA facilities, classified information, sensitive information, and/or resources. Additional details of the agency's contractor and industrial security program are provided in FAA Order 1600.72A.

(1) *Security Clearances for Contractor Employees.*

(a) FAA Order 1600.72A provides that contracts requiring contractor employees to have access to classified information must be prepared and processed according to the procedures contained in the National Industrial Security Program Operating Manual (NISPOM)

(b) In the case of a contract or agreement where the FAA requires persons not employed by the U.S. Government to have access to classified information, a statement to that effect should be included in the SIR and the requirements of FAA Order 1600.72A.

(2) *Employment Suitability of Contractor Employees.*

(a) FAA Order 1600.72A provides specific guidance for determining suitability of FAA contractor employees for access to FAA facilities, sensitive information, and/or resources. It outlines risk levels and associated investigations requirements, and identified additional specific requirements and exemptions from investigative requirements.

(b) As it pertains to suitability determinations, at a minimum, the following actions are required:

(i) Each SIR should include provisions that require the contractor to submit an interim-staffing plan describing the anticipated positions and key employees, as appropriate.

(ii) CO and the appropriate SSE, with input from the Operating Office (e.g., Contracting Officer's Representative (COR)), have the responsibility to make an initial determination as to the applicability of the order in any given SIR and/or contract. An assessment will be made up-front as to whether any positions contained in the staffing plan will require access to FAA facilities, sensitive information, and/or resources. If the CO determines that the order does not apply to a given SIR/contract, this will be documented in a memorandum to file, indicating the matter was given due consideration, addressed adequately, and said determination made.

(iii) The Operating Office, with input from the CO, has the responsibility to make initial position risk/sensitivity level designations based on the initial list of positions and the Statement of Work (SOW). FAA Order 1600.72A contains guidelines with a systematic process of uniformly designating program, position risk, and sensitivity levels. The Office of Personnel Management's Position Designation Automated Tool is to be used in conjunction with this process and to document the designations for all new contract awards. The FAA form 1600.77 Contractor Position Risk/Sensitivity Level Designation may continue to be used for existing contracts.

(iv) For modifications to existing contracts, the appropriate SSE will approve the Operating Office's initial position risk/sensitivity level designations prior to the execution of the modification and these positions and risk level designations should be included in AMS Clause 3.14-2 at the time the contract is modified. For new contracts, the same process would be followed for determining risk/sensitivity level designations, using information required by way of a provision in the SIR, with final positions and risk levels being inserted into Clause 3.14-2 at time of contract award.

(v) AMS Clause 3.14-2 will require the contractor to submit the completed documentation for each employee in a stated position, as necessary to permit the SSE to make an employment suitability determination. This documentation must be submitted through applicable systems or directly to the SSE (for Privacy Act reasons) for approval, or denial of access, using the process described in FAA Order 1600.72A.

(vi) For new contracts, contractor employees must be required to submit the required documentation prior to performing or providing services or supplies under any FAA contract actions. Depending upon the nature and extent of access required, after an initial review of the documentation submitted by the contractor or contractor employee, the SSE may grant interim suitability for the contractor employee to commence performing or providing services or supplies under the contract pending completion of the check and/or investigation and final suitability determination.

(vii) For modifications to existing contracts, contractor employees may continue working under the contract pending submission of the necessary documentation, if any, and completion of a suitability investigation by the SSE. Note there is a period of 30 days that cannot be exceeded in which contractors must submit the forms after the positions and associated risks have been identified via contract modification. The SSE may establish conditions governing such access pending completion of suitability investigation.

(viii) Notification of termination of employees performing within a stated position under a contract must be provided via the VAP to the FAA by the contractor within one (1) day.

(ix) COs will notify the SSE whenever a contract is issued or when the status of a contract changes (i.e., replaced, defaulted, terminated, etc.). Prior coordination of new contracts should have occurred between the Operating Office, the CO, and the SSE.

(c) Procedures for Processing Security Investigations.

(i) Upon contract award, the CO or company will communicate to the personnel security specialist (PSS) a point of contact (POC) who will enter data into the Vendor Applicant Process (VAP) (vap.faa.gov). This POC should be a representative designated by the contractor, and each contract may have a maximum of 5 POCs per contract. The VAP administrator will provide a Web ID and password to each POC.

(ii) The following information must be entered by the POC into the VAP for each contractor employee requiring an investigation:

(AA) Name;

(BB) Date and place of birth (city and state);

(CC) Social Security Number (SSN);

(DD) Position and Office Location;(EE) Contract number;

(FF) Current e-mail address and telephone number for applicant (personal or work); and

(GG) Any known information regarding current security clearance or previous investigations (e.g. the name of the investigating entity, type of background investigation conducted, contract number, labor category (Position), and approximate date the previous background investigation was completed).

(iii) The PSS will examine the information in VAP and check for prior investigations and clearance information.

(AA) If a prior investigation exists and there has not been a 2 year break in service, the PSS will notify the vendor and CO/COR that no investigation is required and that final suitability is approved.

(BB) If no previous investigation exists, the PSS will send the applicant an e-mail (with a copy to the CO or company):

(1) Stating that no previous investigation exists and the applicant must complete a form through the Electronic Questionnaires for Investigations Processing (eQIP) system;

(2) Instructing the applicant how to enter and complete the eQIP form;

(3) Providing where to send/fax signature and release pages and other applicable forms; and

(4) Providing instructions regarding fingerprints.

(iv) The applicant must complete the eQIP form and submit other applicable material within 15 days of receiving the e-mail from the PSS.

(v) If the eQIP form requires additional information, it will be rejected to the applicant with the reason for the rejection.

(vi) The PSS will notify the applicant and CO/COR of any interim suitability determinations.

(d) *Removal of Contractor Employees.* The POC, CO, or COR may notify the SSE/PSS when a contractor employee is removed from a contract by using the Removal Entry Screen of VAP.

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(e) *Reports.* The POCs, COs, and CORs have the ability to run security reports from VAP for contracts and contractor employees.

f. *Costs of Investigations.* To pay for investigations, allotments of funds are made to regions, centers, and headquarters. Unless there has been a specific allotment to the SSE to pay for all contractor employee investigations for operating officers that the SSE services, each operating office must arrange to pay the costs for investigations on those employees working under contracts for which it is responsible. Security screenings, including fingerprint checks on contractor employees are funded through operational funds by each office or division. The operating office responsible for payment must provide the SSE with the accounting code information necessary to have the cost charged appropriately.